

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1927 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RAJESH SING @ RAJU GOVINDSINH RATHOD

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR LR PUJARI, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 21/04/97

ORAL JUDGEMENT

1. By way of this petition under Article 226 of the Constitution of India the petitioner-detenu has brought under challenge the detention order dated 16/1/1997 rendered by the respondent no. 2 u/S. 3(1) of the Gujarat Prevention of Anti-social Activities Act, 1985 (Act No. 16 of 1985) (for short "the PASA Act").

2. The grounds on which the impugned order of

detention has been passed appear at Annexure-B to the petition. They inter-alia indicate that the petitioner by himself and with the aid of his associates indulged in committing robbery and accordingly committed the offences punishable under sections 394, 397, 307, 120B, 114 and 414 of the Indian Penal Code read with section 135(1) of the Bombay Police Act and section 25/1/b.a of the Arms Act and in that respect a case has been registered at C.R. No. 455/1996 in Sattelite Police Station.

3. It has been recited that the detenu's anti-social activity tends to obstruct maintenance of public order and in support of such conclusion statements of some witnesses have been relied upon for two incidents dated 15/8/1996 and 31/8/1996 indicating beating in public the concerned witnesses and creating atmosphere of fear amongst people collected at the time of such incidents.

4. The impugned order of detention and the continued detention of the petitioner have been subjected to challenge in this petition on number of grounds inter-alia on the ground that the petitioner cannot be branded as a "dangerous person" within the meaning of section 2(c) of the PASA Act inasmuch as only one registered case has been relied upon in the grounds of detention. There is no material to show that the petitioner can be said to be habitually committing offences or attempting to commit offences as required u/S. 2(c) of the PASA Act. In support of this challenge Mr. Champaneri has firstly relied upon a decision of this Court in the case of Der Punja Fogal v/s. District Magistrate reported in 1988 (1) G.L.R. p. 313, where Division Bench of this Court considering the definition contained in sec. 2(c) of the PASA Act held that the expression 'habitually' occurring in the said provision would mean 'repeatedly' or 'persistently'. A reference has been made to a decision of the Apex Court in the case of Vijay Narain Singh v. State of Bihar reported in AIR 1984 SC 1334. The last mentioned case came to be referred to in Ayub v/s. S.N. Sinha reported in AIR 1990 SC 2069. Another decision in the case of Rashidmiya @ Chhava Ahmedmiya Shaikh v. Police Commissioner, Ahmedabad reported in AIR 1989 SC 1703 was also referred to in Ayub v. S.N. Sinha's case. There the Supreme Court considered the definition contained in sec. 2(c) of the PASA Act and observed, relying upon the aforesaid decisions, that the expression "habitually" is very significant and a person is said to be a habitual criminal who by force of habit or inward disposition is accustomed to commit crimes. It implies commission of such crimes repeatedly or persistently and prima facie

there should be a continuity in the commission of those offences. Repeated, persistent and similar, but not isolated, individual and dissimilar acts are necessary to justify an inference of habit. Hence, this solitary incident referred to in the grounds of detention would hardly be sufficient to conclude that the detenu was habitually committing or attempting to commit or abetting the commission of offences. Even in *Mustakmiya Jabbarmiya Shaikh v/s. M.M. Mehta, C.P.* reported in 1995 (2) G.L.R. 1268 the Apex Court has observed that in order that a detention order u/S. 3 of the PASA Act might be up-held, it would be necessary to establish the activities mentioned in the section.

5. A faint effort has been made on behalf of the respondents that there are unregistered cases. However, context of the ratio laid down by the Apex Court as stated above. In that view of the matter, it would not be necessary to consider other grounds of challenge against the impugned order of detention.

6. In the result, the impugned order of detention is hereby quashed and set aside. The petitioner-detenu-Rajeshsing alias Raju Govindsinh Rathod shall be forthwith set at liberty from the detention under the impugned order of detention, if he is not required to be detained in any other case. Rule made absolute accordingly.

* * * * *